

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NEIL R. VANDERPOL,

Plaintiff,

v.

KITSAP COUNTY SHERIFF'S OFFICE,
STEVE BOYER,

Defendants.

No. C13-5002 RJB/KLS

ORDER DENYING MOTION FOR
COUNSEL

Before the Court is a letter from Plaintiff in which he requests the appointment of counsel. ECF No. 7. Having carefully considered Plaintiff's request and balance of the record, the Court finds that the motion should be denied.

DISCUSSION

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional circumstances exist, the court must evaluate both “the likelihood of success on the merits [and] the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting

1 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he
2 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to
3 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d
4 1101, 1103 (9th Cir. 2004).

5 That a *pro se* litigant may be better served with the assistance of counsel is not the test.
6 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the
7 issues involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of
8 further facts during litigation. But, if all that was required to establish the complexity of the
9 relevant issues was a demonstration of the need for development of further facts, then
10 practically all cases would involve complex legal issues. *Id.*

11 Plaintiff asks whether a lawyer can be appointed to him and at what cost. ECF No. 7, p.
12 2. Plaintiff has been ordered to show cause or to file an amended complaint. ECF No. 6. He
13 claims that he is having difficulty responding to the order to show cause. *Id.* Plaintiff has
14 demonstrated an ability to articulate his claims *pro se* in a clear fashion understandable to this
15 Court. In the Order to Show Cause, however, the Court directed Plaintiff to provide more facts
16 describing his claims, such as the names of the individuals who he claims ignored his medical
17 needs. Plaintiff is directed to follow the Court’s instructions in the Order to Show Cause (ECF
18 No. 6) and on the 42 U.S.C. 1983 civil rights complaint form provided for his use.

19 Based on Plaintiff’s allegations, the Court notes that this is not a complex case involving
20 complex facts or law. In addition, Plaintiff presents no evidence to show that he is likely to
21 succeed on the merits of his case. While Plaintiff may not have vast resources or legal training,
22 he meets the threshold for a *pro se* litigant. Concerns regarding investigation, access to legal
23 resources or examination of witnesses are not exceptional factors, but are the type of difficulties
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1 encountered by many pro se litigants. Plaintiff has failed in his burden to demonstrate an
2 inability to present his claims to this Court without counsel.

3 Accordingly, it is **ORDERED**:

4 (1) Plaintiff's motion for counsel (ECF No. 7) is **DENIED**.

5 (2) The Clerk shall send a copy of this Order to Plaintiff.
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8 **DATED** this 13th day of February, 2013.

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11 Karen L. Strombom
12 United States Magistrate Judge
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